

259

SEP 2 1988

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ITC 1-12-73/-TA-201 (Final) / 1988

MOLDED PULP EGG FILLER FLATS FROM CANADA

Views on Remand in
Investigation No.
731-TA-201 (Final)



USITC PUBLICATION 2106

AUGUST 1988

COMPLETED

United States International Trade Commission • Washington, DC 20436

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1

In 1985, the U.S. International Trade Commission made a determination in investigation No. 731-TA-201 (Final) that an industry in the United States was not materially injured or threatened with material injury, and the establishment of an industry in the United States was not materially retarded, by reason of dumped imports of molded pulp egg filler flats from Canada (USITC Pub. No. 1724 (1985)). That determination was subsequently appealed to the U.S. Court of International Trade and remanded to the Commission for further consideration (Keyes Fibre Co. v. United States, Ct. No. 85-08-01100, Slip Op. 88-31, Mar. 16, 1988). The attached views were submitted to the Court in response to the remand.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

Investigation No. 731-TA-201 (Final) (Remand)

MOLDED PULP EGG FILLER FLATS FROM CANADA

VIEWS OF THE COMMISSION

In this remand investigation, we determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of molded pulp egg filler flats from Canada which are sold at less than fair value (LTFV). Our determination is based, in part, upon our consideration of adjusted transportation costs for the imported merchandise in accordance with the directive of the Court of International Trade, as well as upon those other factors that we discussed in our final determination.^{1/}

The Scope of Our Remand Determination

On March 16, 1988, the Court of International Trade (Court) entered a judgment in Keyes Fiber Company v. United States, Slip Op. 88-31 (Ct. Int'l Trade, March 16, 1988) remanding the Commission's determination for a reevaluation of the evidence concerning price comparisons between the domestically produced and imported merchandise that were relied upon by the Commission in its final determination. The Court upheld the Commission's decision to compare prices at the distributor-cooperative level rather than

^{1/} Molded Pulp Egg Filler Flats from Canada, Inv. No. 731-TA-201 (Final), USITC Pub. 1724 (July 1985).

the end user level. ^{2/} The Court found, however, that "the Commission's final analysis rests on price at the first level for the domestic product vis-a-vis price at the second level for the imports . . . The price to the importing cooperatives reflected freight from Fripp [the Canadian producer] all the way through to the farmers, whereas the freight for shipments through the distributors went no further than their doorsteps." ^{3/} Consequently, the Court found that "the defect in the Commission's determination herein, which makes remand and re-evaluation appropriate, is the absence of substantial evidence supporting prices entailing freight to two different points in the channels of distribution of the merchandise." ^{4/}

The Court remanded the matter "for reconsideration in the light of the above opinion of the issue of whether the molded-pulp egg-filler-flat industry is materially injured by reason of imports of like merchandise from Canada." ^{5/} The Court has thus directed us to account for freight costs that would be incurred in delivery of egg filler flats to cooperatives and distributors, respectively, and undertake a new price comparison at the cooperative-distributor level after actual prices are adjusted to reflect these costs.

No material injury by reason of LTFV imports from Canada

^{2/} Slip. Op. 88-31 at 9.

^{3/} Id. at 10, 11.

^{4/} Id. at 14.

^{5/} Id. at 15.

In view of the narrow scope of the Court's remand directive, we have limited our investigation to an evaluation of the transportation costs that would be incurred if imported egg filler flats were shipped to cooperatives' facilities rather than directly to end users. ^{6/} We have considered these cost adjustments within the context of the factors upon which we based our final determination.

In the Commission's final determination, we determined that the domestic molded pulp egg filler flat industry is experiencing material injury. ^{7/} We concluded, however, that there is no causal connection between any material injury to the industry and the LTFV imports from Canada. ^{8/} After examining the different channels of distribution for domestically produced and imported merchandise, we found that egg filler flats go through two levels of sale in

^{6/} We are troubled by the Court's conclusion in this case. The Court of International Trade has previously held that the antidumping law directs the Commission to consider actual prices, and precludes adjustment of prices to reflect claimed cost factors. British Steel Corp. v. United States, 593 F. Supp. 405, 412 (Ct. Int'l Trade 1984). The Keyes Fiber Court's decision appears to be create a conflict between the two opinions concerning the Commission's obligations under the antidumping statute. We are also concerned that the Court's directive appears to require us to impute a cost for a transportation stage that never takes place; such fictional cost adjustments cannot reflect actual conditions in the marketplace and require the Commission to indulge in "what if?" speculation. Finally, we note that the Court's statement that the antidumping law "expressly requires a fair comparison", Slip Op. 88-31 at 11-12, quotes a Court of International Trade determination concerning Commerce Department price comparisons. See also Silver Reed America, Inc. v. United States, 581 F. Supp. 1290 (Ct. Int'l Trade 1984), rev'd sub nom. SCM Corp. v. United States, 753 F.2d 1033 (Fed. Cir. 1985).

^{7/} USITC Pub. 1724 at 6-7.

^{8/} Id. at 7-8.

each distribution channel: the distributor-cooperative level and the end user level. There was no significant underselling by the Canadian product at the distributor-cooperative level and, in fact, imports were frequently priced higher than the domestic product at that level. Although there was underselling by imports at the end user level, we found that this was caused by the characteristics of a cooperative versus a distributor and not by the LTFV imports. In addition, there were no documented lost sales at the distributor-cooperative level and there was no indication that imports had a harmful effect on U.S. prices. Based upon this, we determined that LTFV imports of egg filler flats from Canada are not a cause of material injury to the U.S. industry. ^{9/}

The Court directed us to compare prices that reflect the costs of freight to the same point in the channels of distribution of the merchandise. ^{10/} In order to determine the costs that would be associated with the transportation of imported egg filler flats to the cooperatives, we have adjusted the prices for the imports to the cooperatives to reflect the distance from the Canadian producer to the cooperatives rather than to the end user. ^{11/}

^{9/} Id. at 9-10.

^{10/} Slip Op. 88-31 at 14.

^{11/} This cost adjustment was based on the actual transportation cost data (on a per-mile basis) provided during the final investigation. Because this information was available, there was no reason to reopen the record during this remand proceeding to determine these transportation costs.
(Footnote continued on next page)

The adjusted import prices show that there has not been significant underselling by the Canadian producer at the distributor-cooperative level, despite the creation of several additional instances of underselling by the imports as a result of the transportation cost adjustments. ^{12/} In fact, the adjusted import prices in many instances were higher than the adjusted prices that we relied upon in our final determination. ^{13/}

In sum, the continued absence of significant underselling by imports at the distributor-cooperative level of distribution, considered with the other reasons specified in our final determination, indicate the absence of a causal connection between the condition of the U.S. industry and the LTFV imports from Canada. ^{14/}

(Footnote continued from previous page)

See Memorandum EC-L-106. We note that, because imported egg filler flats are never actually delivered to cooperatives, there are no actual costs associated with such nonexistent deliveries. In our judgment, the method for calculation that we have used provides the best method for complying with the Court's directive.

^{12/} Memorandum EC-L-106, Tables A-C.

^{13/} Id.

^{14/} We also note that the absence of significant import underselling, and frequent instances of overselling, based upon these adjustments supports a conclusion that there is no threat of material injury by reason of the LTFV imports from Canada. Because the Court's remand directive did not address the other threat factors that we considered in our final determination, we see no reason to discuss threat here.

UNITED STATES
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WASHINGTON, D.C. 20425

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6